

7 Official Opinions of the Compliance Board 76 (2010)

**Meeting – Presence of County Commissioners as individuals
at meeting of another body not a meeting of the
Commissioners.**

**Public Body – Charles County Economic Executive
Committee appointed by County Commissioners
sufficiently formed to be subject to Open Meetings Act**

December 22, 2010

George R. “Rusty” Talcott, V

The Open Meetings Compliance Board has considered your complaint concerning the Charles County Commissioners’ attendance at a meeting of the Charles County Economic Executive Committee on August 24, 2010.

For the reasons explained below, we find that the Board of County Commissioners did not violate the Act in that they appeared to have attended as guests of the designated chair of the Executive Committee and did not conduct any business as the Board. We find, however, that the Executive Committee itself was a public body governed by the Open Meetings Act. Because the Executive Committee failed to give notice of the meeting, the meeting was conducted in violation of the Act.

I

Complaint and Response

According to the complaint, four county commissioners¹ attended the first meeting with the newly appointed Charles County Economic Executive Committee during the afternoon of August 24, 2010, at the County Office Building. No notice of this meeting was given to the public. Included with the complaint was a July 2, 2010, press release from the County Commissioners’ Office announcing the Commissioners’ appointment of the Executive Committee. The County Commissioners charged the Executive

¹ The Board of County Commissioners ordinarily consists of five members, but we understand that currently there is currently a vacancy on the Board.

Committee with developing bylaws for the planned Economic Development Advisory Board for approval by the Commissioners. According to the complaint, the 12 individuals appointed to the Executive Committee and the four County Commissioners, as well as certain County staff members, attended the meeting. While the complaint appeared to focus primarily on the presence of the County Commissioners, a preliminary question is whether the Executive Committee itself was subject to the Act.

In a timely response to the complaint, Roger Lee Fink, County Attorney for Charles County, described the development of the Executive Committee in further detail.² On May 21, 2010, the County Commissioners announced their intent to establish an Economic Development Advisory Board. Following that announcement, the County Commissioners determined to first create an Executive Committee to develop recommendations for the County Commissioners' consideration concerning the Board's powers and duties, as well as suggested bylaws. It was envisioned that, once the County Commissioners approved the bylaws, they would establish the Board by formal action.

The County Commissioners appointed the members of the Executive Committee over a period of several months. As of August 24, 2010, about 15 members had been appointed, at least 10 of whom were not officials or employees of the County, State, or any municipal government.³ Because more than three months had passed since the May 21 announcement, the designated chairman of the Executive Committee invited the other appointees to attend an organizational meeting at the County Office Building on August 24, 2010. The chairman also extended a courtesy invitation to the individual County Commissioners in the event any of them wished to attend. The response acknowledged that no public notice was given in advance of the meeting.

As to the suggestion that the meeting was a County Commissioner meeting, the response stated, "it clearly [was] not." The Commissioners were invited merely to offer welcoming remarks. After their remarks, three of the Commissioners left. Only Commissioner Patterson - - a non-voting, *ex officio* member of the Executive Committee - - remained for the meeting. Included with the response was a draft copy of minutes of the meeting, showing that the Commissioners had no functional role to play. The response cited *Ajamian v. v. Montgomery County*, 99 Md. App. 665 (1994) as well as 1 OMCB

² We had granted the County Attorney a brief extension of time to reply.

³ Apparently, the County Commissioners made additional appointments on September 21, 2010.

Opinions 104 (1994) and 1 *OMCB Opinions* 120 (1995), in support of its position.

The response also addressed whether the Executive Committee meeting was subject to the Act. As phrased in the response, the issue is whether, “at this stage of its yet-to-be fully formed existence, was the ... Executive Committee a public body subject to the Open Meetings Act at the time the meeting was scheduled? Additionally, in the absence of formal establishment, bylaws, clear direction from the appointing authority and other matters relating to the roles and responsibilities of the committee and its members, was the Committee empowered to exercise any more than an administrative internal organizational function at its August 24th first meeting?” Based on prior opinions of the Compliance Board, the response conceded that the Executive Committee was sufficiently formed to be a public body and that at least part of the session involved an advisory function that would be subject to the Act’s open meeting requirements unless the meeting was properly closed. The response noted that the Executive Committee conducted its first meeting evidently unaware of the applicability of the Act and its need to provide public notice.. However, the County Attorney did provide an overview of the Act as the first item at the Executive Committee’s second meeting and indicated that notice was provided for that meeting and will be provided for future sessions.

II

Analysis

We agree with the County Attorney that the County Commissioners did not violate the Open Meetings Act by attending the August 24, 2010, meeting. The authorities cited in the response might be distinguished in that the meeting here was conducted by a public body created by the County Commissioners. Nevertheless, there is no suggestion that the County Commissioners were present in anything other than their individual capacities or that they convened as a public body to consider or to transact public business. To be sure, the recommendations of the Executive Committee would be considered and perhaps adopted by the County Commissioners before the establishment of the Economic Development Advisory Board. However, based on the response, we understand that only one County Commissioner was present at the time the Executive Committee actually started its work.

We do find that the Executive Committee itself was a public body. Although it apparently was not created by any formal instrument, we find that the Commissioners’ appointment of the members did result in establishment of a “public body” under §10-502(h)(2)(i). The fact that additional members were appointed subsequent to the meeting does not alter our analysis. It appears that a quorum was available to start the work of the Executive

Committee on August 24, 2010. In fact, it is noteworthy that the press release from the County dated July 2, 2010, indicated that the Executive Committee existed as of that date. Based on the draft minutes included with the response, a quorum had assembled. While the response raised questions as to the authority of the Executive Committee to act at that point, the draft minutes illustrate that the Executive Committee operated under the assumption that it had the necessary authority. Further, the members conducted a “meeting” during which, for at least part of the time, they carried out an advisory function as defined under the Act. §10-502(c)(3). That is, the Executive Committee considered proposed bylaws to be recommended to the County Commissioners for the planned Economic Development Advisory Board in accordance with the County Commissioners’ charge. Had the County Commissioners questioned the Executive Committee’s authority to meet on August 24, 2010, the County Commissioners or their staff clearly would have advised the Committee or its chairman before that date.

Given the acknowledgment that no notice was provided, extensive discussion is unnecessary. We find that the Executive Committee violated §10-506 by holding a meeting without providing public notice as required by the Act. However, we commend the County Attorney’s Office for advising the Executive Committee of the requirements of the Act after the deficiency came to the office’s attention.

III

Conclusion

We find that the Charles County Commissioners did not violate the Open Meetings Act by attending the Economic Executive Committee meeting on August 24, 2010. However, we find that the Executive Committee violated the Act in that the Committee failed to give public notice of its meeting that date.

OPEN MEETINGS COMPLIANCE BOARD

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